IN THE HIGH COURT OF BOMBAY AT GOA.

LETTERS PATENT APPEAL NO. 29 OF 1997
AND
LETTERS PATENT APPEAL NO. 30 OF 1997

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Smt. Gopika Fottu Gad
(since deceased) through
her legal representatives:
1. Mr. Anand Gad(since
deceased) through his
legal representatives:
1a. Smt. Sima Anand Gad,
major, widow,

b. Miss Vrushali Anand Gad,
daughter, age 22 years,

c. Mr. Gaurish Anand Gad,
son, age 25 years,
all residents of Dattawadi,
Mapusa, Bardez, Goa.

d. Mrs. Uma Devidas Alve,
daughter, married to

e. Mr. Devidas Alve, son-in-law,
both residents of Borda,
Bicholim, Goa.

2. Mrs. Anand Gad,

3. Mr. Ramakant Gad,

4. Mrs. Ramakant Gad,
All residing at Dattawadi,
Mapusa.

5. Mrs. Vassanti Teli,

6. Mr. Pandurang Teli,
Both r/o Valpoi, Sattari,
Goa.

7. Mrs.Saju Mapusekar(since
deceased) through her
legal representatives:

7a. Sham Ramkrishna Mapsekar,
son,

b. Jamini Sham Mapsekar,
daughter-in-law,

c. Gajanan Ramkrishna Mapsekar,
son,

d. Hema Gajanan Mapsekar,
daughter-in-law,

e. Sameer Ramnkrishna Mapsekar,
son,

f. Shabhangi Sameer Mapsekar,
daughter-in-law,

g. Vidya Chandrashekhar Diukar,
daughter,

h. Chandrashekar Diukar,
son-in-law, all major,
legal representatives (a) to
(f) residing at Ansabhat,
Mapusa, Bardez, Goa.
Legal representatives (g) and
(h) residing at Shetye Wado,
Dhuler, Mapusa, Bardez, Goa.

i. Shanti Dattaram Natekar,
daughter,

j. Dattaram Natekar, son-in-law,
r/o Near Saibaba Temple,
Verla-Kanca, Khorlim, Mapusa,
Bardez, Goa.

k. Jaya Devendra Gawandalkar,
daughter,

l. Devendra Gawandalkar,
son-in-law, r/o Thivim Mandal,
Near Kodar Hospital, Thivim,
Bardez, Goa.

8. Mr. Ramakrishna Mapusekar,
Both r/o Ansabhat, Mapusa.

9. Mrs. Chaya Shirodkar,

10. Mr. Keshav Shirodkar,
Both r/o Ansabhat,
Near Electricity Department,
Mapusa. ... Appellants.

versus

1. Shrirang Pandurang Narvenkar,
   r/o Ansabatta-Mapusa,

2. Smt. Nalini S. Narvenkar,
   w/o late Shrishanker P.
   Narvekar,

3. Shri Rajesh S. Narvenkar,
   s/o late Shrishanker P.
   Narvekar,

4. Miss Naval S. Narvenkar,
   d/o late Shrishankar P.
   Narvekar,

5. Miss Madhavi S. Narvenkar,
   alias Mrs. Madhavi Pangam,
   d/o late Shrishankar P.
   Narvekar,

   All r/o Dattawadi, Mapusa.

6. Additional Rent Controller,
   Mapusa, Goa.

7. Administrative Tribunal,
   Panaji, Goa. ... Respondents.

Mr. S. D. Lotlikar, Senior Advocate with Mr. A. D. Bhobe, Advocate for the Appellants.

Mr. M. S. Usgaonkar, Senior Advocate with Mr. Sudin Usgaonkar, Advocate for the Respondents.

LETTERS PATENT APPEAL NO. 30 OF 1997

1. Shrirang Pandurang Narvenkar,
   r/o Ansabhat-Mapusa,

2. Smt. Nalini S. Narvenkar,
   w/o late Shrishankar P.
   Narvekar,

3. Shri Rajesh S. Narvenkar,
   s/o late Shrishankar P.
   Narvekar,

4. Miss Naval S. Narvenkar,
   d/o late Shrishankar P.
   Narvekar;

5. Miss Madhavi S. Narvenkar,
   d/o late Shrishankar P.
   Narvekar;
   All r/o Dattawadi, Mapusa, ... Appellants.

versus

Smt. Gopika Fattu Gad
(since deceased) through her
legal representatives:

1. Anand Gad

2. Mrs. Anand Gad

3. Ramakant Gad

4. Mrs. Ramakant Gad.

   All r/o Dattawadi, Mapusa.

5. Mrs. Vassanti Teli

6. Mr. Pandurang Teli,

   both r/o Valpoi, Sattari-Goa.

7. Mrs. Saju Mapusekar,

8. Mr. Ramkrishna Mapusekar,

   both r/o Ansabhat, Mapusa.

9. Chaya Shirodkar

10. Mr. Keshav Shirodkar,

    both r/o Ansabhat, Near
    Electricity Department,
    Mapusa.

11. Additional Rent Controller,
    Mapusa-Goa,

12. Administrative Tribunal,
    Panaji-Goa. ... Respondents.

Mr. M. S. Usgaonkar, Senior Advocate with Mr. Sudin Usgaonkar, Advocate for the Appellants.

Mr. S. D. Lotlikar, Senior Advocate with Mr. A. D. Bhobe, Advocate for the Respondents.

CORAM: D. G. DESHPANDE &
P. V. HARDAS, JJ.

DATED: 13TH JANUARY,2003.

ORAL JUDGMENT(PER D. G. DESHPANDE, J.)

Letters Patent Appeal No. 29 of 1997 is filed by the Original landlord and Letters Patent Appeal No. 30 of 1997 is filed by the Original tenant, both against the Order of the learned Single Judge in Writ Petition No.340 of 1996 dated 13th June, 1997.

2. A brief background of the litigation is necessary. Landlord, Original Gopika filed an application under Section 22 of the Rent Control Act, 1968 against Shrirang for the eviction and vacant possession of the opponents firstly on the ground that Opponent No.1 Shrirang had left the premises and also on the ground that there was sub-letting of premises in favour of the other Opponents. The claim was resisted by the tenants firstly contending that Shrirang was "Karta" of the family and all the Respondents were members of the family and the lease was taken on behalf of the family. Shrirang had alternately contended that even though the Opponent No.1 had left the premises, the other opponents being members of the family

had a right to continue in possession of the premises. Parties led evidence before the Trial Court and thereafter, the Additional Rent Controller passed an Order in favour of the landlord directing the Respondents to vacate the compartment and hand over peaceful possession of the same within 30 days. This Order was dated 31st July, 1991 in Case No.Rent/Map/Arc/1/90. This Order was challenged by the tenant before the Administrative Tribunal and the Respondent's application i.e. the landlord's application was dismissed and the Appeal was also dismissed. Thereafter, the landlord filed Writ Petition before this Court wherein the learned Single Judge came to the conclusion that the finding arrived at by the Respondent No.11 of that Petition i.e. the Additional Rent Controller in relation to the ground of cessation to occupy the premises by the Respondent No.1 was well founded and could not be disturbed. However, the learned Single Judge held that Petitioners No.2 to 5 were not the family members of Shrirang and, therefore, there could not be orders of eviction under the said Act. It is against this Order of the learned Single Judge that the present Letters Patent Appeals are filed by both the parties.

3. We heard Mr. S. D. Lotlikar, the learned Senior Counsel appearing for the landlady and Mr. M. S. Usgaonkar, the learned Senior Counsel appearing for the tenants at length.

4. According to Mr. S. D. Lotlikar, the learned Senior Counsel appearing for the landlady, he has relied upon a Judgement of the Apex Court in the matter of **Thakker Keshavalal Mohanlal** v. **Parekh Amrutlal Harilal and others** reported in AIR 1973 SC 1099 wherein there was a reference by the Apex Court to a Judgment in the matter of **Hiralal Vallabhram** v. **Kasturbhai** reported in AIR 1967 SC 1853 and this Judgment of the Apex Court was not looked at from proper angle and, therefore, the learned Single Judge came to a wrong conclusion. Mr. Lotlikar, the learned Senior Counsel also relied upon a Judgment of the Apex Court in the matter of **Importers and Manufacturers Ltd.** v. **Pheroze F. Taraporewala** reported in AIR 1953 SC 73 and contended that in the matter of **Thakker Keshavalal Mohanlal** v. **Parekh Amrutlal Harilal and others**(supra) a decree for ejectment was passed against the sub-tenant only treating him as a trespasser but no order of eviction was passed against them or tenants-in-chief and, therefore, in that background, in the matter of **Hiralal Vallabhram v. Kasturbhai**(supra) it was held that there was no justification for the appellate Court to pass a decree against a trespasser.

5. A perusal of the Judgment in the matter of **Thakker Keshavalal Mohanlal** v. **Parekh Amrutlal Harilal and others**(supra) shows that Respondent No.8 was granted a

lease of certain premises by Respondent Nos.1 to 5. Respondent No.8 entered into a partnership with the Appellant for running the factory. The partnership was dissolved on June 3, 1966 and on July 27, the Respondent Nos.1 to 5 gave a notice to quit to Respondent No.8 on the ground that he had sub-let the premises to the Appellant and to the Respondent Nos.6 and 7. An eviction suit was thereafter filed. It was decreed and the decision was confirmed in appeal as well as in the revision filed before the High Court and thereafter, the matter went to Apex Court in Special Leave. In that case, the Appellant's contention was that it was a suit against a trespasser and, therefore, the Rent-Act Court had no jurisdiction to entertain it. On noticing the Judgment of the Apex Court in the matter of **Importers and Manufacturers Ltd.** v. **Pheroze F. Taraporewala** reported in 1953 SCR 226 in para 3, this Court on similar facts, ruled that the joinder of a sub-tenant whose sub-tenancy was invalid cannot alter the nature of the suit and make it any the less a suit between a landlord and tenant or take it out of the Rent Act.

6. It appears that the Appellant in that case had placed reliance on a Judgment of the Apex Court in the matter of **Hiralal Vallabhram** v. **Kasturbhai**(supra) but the Apex Court observed that the reliance was misplaced because in Hiralal's case the decree was passed only against the Appellant but no decree was passed against the main tenant.

It will be clear that the Judgment in the matter of **Hiralal Vallabhram** v. **Kasturbhai**(supra) was distinguished by the Apex Court, in the matter of **Importers and Manufacturers Ltd.** v. **Pheroze F. Taraporewala** reported in AIR 1953 SC 73 on facts and AIR 1953 SCR 226 was followed.

7. In the matter of **Importers and Manufacturers Ltd.** v. **Pheroze F. Taraporewala**(supra) suit was filed by the landlord under Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 for ejectment. The first Defendant was the Original tenant to whom the flat was sub-let and the second Defendant was the sub-lessee of the first Original tenant. A decree was passed against both the Defendants. The Appeal was challenged in Appeal before the Bench of the Small Cause Court wherein a new plea was taken that Small Cause Court had no jurisdiction in so far as it related to the second Defendant. The Appellate Bench of the Small Cause Court dismissed the Appeal with costs. The second Defendant thereafter moved the High Court in revision which was also dismissed and, therefore, the second Defendant moved the Apex Court in Appeal. While considering the plea raised by the Company in para 3 of the said Judgment, the Apex Court has elaborately considered the various pleas raised by the Company. In this background, the Apex Court held that Section 28 of the Small Cause Court Act confers

jurisdiction of the Small Causes not only to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of the premises but also to "deal with any claim or question arising out of this Act or any of its provisions". The Apex Court, therefore, held that there was no reason to hold that "any claim or question must necessarily be one between the landlord and the tenant". In any case, it was further held that once there is a suit between a landlord and a tenant relating to the recovery of rent or possession of the premises the Small Cause Court acquires the jurisdiction not only to entertain that suit but also to deal with any claim or question arising out of the Act or any of its provisions". The Apex Court further held that apart from that Section, under the ordinary law, a decree for possession passed by the tenant in a suit for ejectment is binding on a person claiming title under or through that tenant and is executable against such person whether or not he was or was not a party to the suit.

8. Relying, therefore, on the aforesaid Judgments of the Apex Court, Mr. Lotlikar, the learned Senior Counsel appearing for the landlady contended that in the instant case, other Respondents were joined i.e. other opponents were joined in the suit before the Trial Court. They were given opportunity to put forth their case and lead evidence and now, after the learned Single Judge allowed their Writ

Petition as against Original Respondent No.1, in that Writ Petition decree of eviction should have been passed against all.

9. As against this, it was contended by Mr. M. S. Usgaonkar, the learned Senior Counsel appearing for the tenants that firstly, according to the tenants, Original Opponent No.1 had entered into an agreement of tenancy with the landlord for and on behalf of the entire joint family as "Karta" and secondly that alternately the other Opponents i.e. Opponents from 2 to 5 were neighbours of his family and it should therefore not be said that Original Opponent No.1 has ceased to occupy the premises. According to him, apart from the Order of the learned Single Judge, eviction of Opponent No.1 was wrong.

10. We are not in agreement with the submissions made by Mr. Usgaonkar, the learned Senior Counsel appearing for the tenants, firstly because when an application was filed before the Rent Controller under Section 22, the Opponent filed a joint reply which is at page 131. The case made out by the Opponents is about joint tenancy which has to be reproduced from para 3 of the said reply where it reads as under:-

> "The contents of para 2 of the application are not admitted. It is submitted that the late husband of the opponent No.2 was the "Karta" or head of the

> Narvekar family when the suit building was leased to the family in the year 1960. The opponent No.2 was residing with the other family members in the suit building since the premises were taken on lease".

11. In fact the plea raised by the tenant is vague and ambiguous. If according to the tenant the premises were taken for and on behalf of the family, it was necessary for the tenant to plead firstly in the reply that the agreement of tenancy was entered into by the landlady or landlord by the Original Opponent No.1 as "Karta" of the family and that this fact was brought to the notice of the landlady or landlord. Secondly, it was necessary for the tenants to plead the date and time when such an agrement was concluded between them and the landlord. Thirdly, it was necessary for them to plead that all the four brothers constituted joint family and Opponent No.1 who entered into agreement made the landlord aware that it was going to be leased in favour of the joint family and not in the individual name of Shrirang. There are absolutely no pleadings nor any evidence in that regard is led. We were also taken to the evidence of the witnesses examined on behalf of the tenants. But none of them have given such particulars about this nature of agreement. Therefore, the plea of tenancy standing in the name of joint family was rightly rejected by the Court below and is required to be rejected by this Court also both for want of necessary particulars and also for want of any evidence in support of their pleas. Secondly, this plea is required to be

rejected because when the landlady had filed earlier proceedings for recovery of rent against the same opponents, such a plea of tenancy being created in favour of the joint family was not raised at all. It is, therefore, clearly an afterthought. Thirdly, there is no single document to show that the rent was paid on behalf of the family to the landlord. None of the receipts produced on record of rent payment to the present landlord show that landlord ever consented to the status of the joint family as tenant. Therefore, it is clear that the plea raised by the tenant about the tenancy being in favour of the joint family is totally devoid of any substance.

12. Mr. Usgaonkar, the learned Senior Counsel appearing for the tenants alternately contended that even if the Original Opponent No.1 left the premises, the other Opponents continued to occupy in their right and, therefore, the provisions of Section 22(f) are not attracted. The said provisions read as follows:-

> "Section 22(f) of the Goa, Daman and Diu Buildings(Lease, Rent and Eviction) Control Act, 1968 - that the tenant has ceased to occupy the building for a continuous period of 4 months without reasonable cause".

13. Even in that behalf, the pleadings are vague and ambiguous. What is stated in this regard is only in para 10 which reads as follows:-

> "It is submitted somewhere in 1972 that some of the members of the joint family have taken on rental basis one house at Ansabhat as the area of suit building was not sufficient to accommodate all family members. However, the family festivals/functions are celebrated at the suit building".

14. If, it was the case of the Opponents that firstly they were Opponent Nos.2 to 5, members of Opponent No.1 should have stated in clear terms about this in their reply. Secondly, they should have admitted that Opponent No.1 left the premises but they continued to occupy them in their right as family members. However, the pleas are totally vague and ambiguous with no particulars. Therefore, this case of the Appellant cannot be accepted.

15. Lastly, the learned Single Judge did not grant decree against the Opponents because according to him, if the landlord had failed to prove that there was any sub lease, then Opponents became trespassers and the Rent Controller had no jurisdiction to pass a decree against them. This is not in conformity with the observations made in the matters of **Importers and Manufacturers Ltd.** v. **Pheroze F. Taraporewala**(supra) and **Thakker Keshavalal Mohanlal** v. **Parekh Harilal and others**(supra) because as rightly argued by Mr. Lotlikar, the learned Senior Counsel appearing for the landlady, if such a plea is allowed then every tenant will go on introducing some persons in the

premises making it difficult for the landlord to obtain any effective decree. Secondly, the aforesaid Judgments of the Apex Court are very clear and, therefore, for all these reasons the Letters Patent Appeal No.29 of 1997 of the landlord is required to be allowed. The Order of the learned Single Judge is modified to the extent that the decree will operate against all the Respondents. The Letters Patent Appeal No.30 of 1997 of the tenant is required to be dismissed with no order as to costs.

D. G. DESHPANDE, J.

P. V. HARDAS, J.

RD.